84-1658

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In the Supreme Court of the United States

OCTOBER TERM 1984

ATLANTIC RICHFIELD COMPANY,

Petitioner

VS.

CHESTER LOUIS DOUCET

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JAMES E. DIAZ, SR.
ONEBANE, DONOHOE, BERNARD,
TORIAN, DIAZ, McNAMARA & ABELL
P. O. Drawer 3507
Lafayette, Louisiana 70502
(318) 237-2660

ATTORNEYS FOR PETITIONER

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

30 pp

QUESTION PRESENTED FOR REVIEW

Whether the attempt by Congress to give retroactive application to the 1984 Amendments to §904(a) and §905(a) of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §904(a), §905(a)) is a violation of Atlantic Richfield Company's due process rights under the Fifth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

In addition to the parties appearing in the caption to this petition, the employer of Chester L. Doucet, Cactus Drilling Company, had an interest in the outcome of this case.

The following parties filed amicus curiae briefs with the Fifth Circuit Court of Appeals: (1) Texaco, Inc.; (2) Gulf Oil Corporation; (3) Amoco Production Company (U.S.A.); (4) Union Oil of California; (5) Aminoil, Inc.; (6) McMoran Oil and Gas Company; (7) Chevron U.S.A., Inc.; (8) Association of Trial Lawyers of America; (9) the law firm of Domengeaux and Wright; and (10) Louisiana Trial Lawyers Association.

The United States is not a party; however, 28 U.S.C. §2403(a) may be applicable so a copy of this petition has been served upon the Solicitor General, Department of Justice.

The Fifth Circuit Court of Appeals has not certified to the Attorney General the fact that the constitutionality of this Act of Congress was drawn in question.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

ATLANTIC RICHIELD COMPANY
Petitioner

VERSUS

CHESTER LOUIS DOUCET

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PENNSYLVANIA
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Atlantic Richfield Company petitions this Court for a Writ of Certiorari to review the judgment and decree of the United States Court of Appeals for the Fifth Circuit in this case. Petitioner here was the appellee in that Court, and was a defendant in the District Court.

OPINIONS BELOW

On July 27, 1984, the Honorable John M. Shaw, United States District Judge for the Western District of Louisi-

ana, entered a summary judgment in this matter in favor of petitioner. The ruling has not been officially reported and is reproduced as Appendix A hereto.

The respondents appealed to the United States Court of Appeals for the Fifth Circuit and the Court reversed and remanded. The opinion has not been officially reported and is reproduced as Appendix B hereto.

JURISDICTION

The opinion of the Court of Appeals was handed down on January 30, 1985. (See Appendix B.) No application for rehearing was filed with the Court of Appeals, it being the intention of counsel for Atlantic Richfield to file a petition for a writ of certiorari with this Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

This petition involves an interpretation of the Fifth Amendment to the Constitution of the United States (the text of which is set out in Appendix C) and the following statutes.

Section 4(a) of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §904(a)) provides in pertinent part:

> 4(a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908, and 909 of this title. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensa-

> tion to employees of the subcontractor unless the subcontractor has secured such payment.

Section 5(a) of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §905(a)) provides in pertinent part:

> 5(a) The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death.

On September 28, 1984, Congress enacted the Longshore and Harbor Workers' Compensation Act Amendments of 1984 amending sections 4(a) and 5(a) of the Longshoremen's and Harbor Workers' Compensation Act. 98 Stat. 1639, 1641.

Section 4(a) was amended to read as follows:

> 4(a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8 and 9. In the case of an employer who is a subcontractor, only if such subcontractor fails to secure the payment of compensation shall the contractor be liable for and be required to secure the payment

> of compensation. A subcontractor shall not be deemed to have failed to secure the payment of compensation if the contractor has provided insurance for such compensation for the benefit of the subcontractor.

Section 5(a) was amended by adding at the end thereof the following new sentence:

> For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 4.

The amendments to sections 4(a) and 5(a) became effective on the date of enactment and were designated to apply to claims pending on the date of enactment.

> Except as otherwise provided in this section, the amendments made by this Act shall be effective on the date of enactment of this Act and shall apply both with respect to claims filed after such date and to claims pending on such date. 98 Stat. 1639, 1655.

STATEMENT OF THE CASE

On June 26, 1984, this Honorable Court held that a general contractor is immune from suit in tort by employees of its subcontractors if the general contractor has complied with its statutory duty to secure Longshoremen's and Harbor Workers' Act benefits for the subcontractors' employees. *Washington Metropolitan Area Transit Authority vs. Johnson*, 104 S.Ct. 2827, 2836 (1984).

Pursuant to the teachings of *Johnson*, petitioner, Atlantic Richfield Company (hereinafter ARCO), moved for summary judgment in the case of *Chester Louis Doucet and National Union Fire Insurance Company of Pittsburgh, Pennsylvania vs. Atlantic Richfield Company*, 83-0351 "S" (W.D. La. 1984).

Doucet involved the following factual background: ARCO had entered into a mineral lease with the United States Government permitting ARCO to explore for, develop and produce oil and gas from a tract of sea bottom including Eugene Island Area, Block 175, offshore Louisiana. On March 1, 1980, ARCO, in the development of the leased minerals, contracted with Cactus International, Inc. (hereinafter Cactus), to drill and complete one or more wells in search of oil and/or gas on federal leases off the shores of the State of Louisiana. (Tr. p. 174). The ARCO-Cactus contract required Cactus to drill each well to the depth and in the manner specified by ARCO. ARCO representatives were to insure satisfactory compliance with the drilling specifications and failure on the part of Cactus to conduct its operations in a manner satisfactory to ARCO would result in ARCO's taking over the operation of Cactus equipment for the purpose of completing the well. (Tr. pp. 184, 185 and 192). ARCO representatives, commonly referred to as "company men" or "company representatives", had access to the Cactus equipment for the purpose of observing and inspecting the work performed by Cactus and Cactus worked solely under the direction of ARCO representatives. (Tr. p. 193).

On February 19, 1982, in accordance with its obligations under the drilling contract, Cactus was drilling a well for ARCO on an ARCO fixed platform at Eugene Island Area, Block 175, offshore Louisiana, on the Outer Con-

tinental Shelf. Chester Doucet was employed by Cactus and assigned to the platform as a driller. On the 19th day of February, 1982, Doucet was involved in an accident and thereafter instituted suit in tort against ARCO on numerous bases.

National Union Fire Insurance Company of Pittsburgh, Pennsylvania (hereinafter National Union), intervenor in the suit by Chester Doucet, has paid to and on behalf of Chester Doucet compensation benefits under the Longshoremen's and Harbor Worker's Compensation Act. ARCO has not paid compensation benefits to Chester Doucet but secured the payment of compensation through a policy of insurance with the Insurance Company of North America, a copy of which is attached to the joint stipulations. (Tr. p. 228).

Relying on this Court's decision in *Johnson*, the district court found that ARCO was immune from Doucet's tort suit and granted the motion for summary judgment.

Doucet appealed to the United States Court of Appeals for the Fifth Circuit.

In the interim, Congress passed the amendments to the Longshoremen's and Harbor Workers' Compensation Act, repealing the *Johnson* decision and making the repeal retroactive to pending claims. At the appellate argument, ARCO contested the constitutionality of the retroactive application of the amendment. The Fifth Circuit found that the district court had "correctly granted summary judgment for ARCO"; however, the Court noted that while the case was on appeal, Congress had passed the 1984 amend-

ments to the Longshoremen's and Harbor Workers' Compensation Act. The amendments eliminated ARCO's right of tort immunity and provided that the new law was applicable to pending claims. Thus the Fifth Circuit held that "the basis of the trial court's holding . . . correct when made . . . had been destroyed", therefore ARCO was not immune from tort liability. The Court did not address the constitutional issue. *Doucet, et al v. ARCO,* 84-4536 (5th Cir. 1985).

This petition for a writ of certiorari seeks to review the judgment of the Court of Appeals reversing the district court's ruling on the basis that retroactive application of the amendments is unconstitutional.

JURISDICTION IN THE COURT OF THE FIRST INSTANCE

The jurisdiction of the District Court was invoked pursuant to Diversity of Citizenship, 28 U.S.C. §1332, and the Outer Continental Shelf Lands Act, 43 U.S.C. §1331, et seq.

REASONS FOR GRANTING THE WRIT

A. *Introduction*

The issue presented by this petition is whether the retroactive application of the 1984 amendments to the Longshoremen's and Harbor Workers' Compensation Act is constitutional.

Since the enactment of the Longshoremen's and Harbor Workers' Compensation Act of 1927, the Act has provided that: (1) every employer shall be liable for compensation, (2) a general contractor shall secure payment of compensation for employees of the subcontractor unless the

subcontractor has secured such payment, and (3) liability for compensation shall be "exclusive and in place of all other liability . . ." See 33 U.S.C. §§904(a) and 905(a).

In *Johnson*, this Court reaffirmed that §§904(a) and 905(a) of the Longshoremen's and Harbor Workers' Compensation Act provide a general contractor with tort immunity.

"We conclude, therefore, that §§904(a) and 905(a) of the LHWCA render a general contractor immune from tort liability provided the contractor has *not failed to honor its statutory duty to secure compensation for subcontractor employees* when the subcontractor itself has not secured such compensation." (Emphasis supplied). *Johnson*, supra, 104 S.Ct. at 2836.

Both the district court and the Fifth Circuit recognized that the explicit provisions of the LHWCA dictate that ARCO is immune from liability because Chester Doucet's claim is a tortious cause of action asserted by an employee of a subcontractor.

The existence of tort immunity on the part of ARCO is in complete conformity with the *"quid pro quo"* which lies at the heart of the LHWCA. In 1927, Congress placed upon general contractors the obligation of securing the payment of compensation for workers the contractors did not directly employ. 33 USC §904. The contractors who bore the obligations of §904(a) were entitled to the "quid" of employment immunity provided for in §905(a). Contractors such as ARCO were subject to the criminal penalties of §938 for failure to secure compensation in compliance with §904, and thus, in return for this "guarantee of compensa-

tion", ARCO enjoyed immunity from the tort suit brought by Chester Doucet, an employee of a subcontractor.

This Court has repeatedly instructed courts interpreting the LHWCA that "the wisest course is to adhere closely to what Congress has written". *Rodriguez vs. Compass Shipping Company,* 451 U.S. 596, 617 (1981), *Johnson,* supra, 104 S.Ct. at 2836. In 1927, Congress expressly granted immunity to contractors such as ARCO as part of the "quid pro quo" of the LHWCA and this Court reaffirmed that interpretation of the Act in *Johnson.*

B. *Retroactive Application of Statutes to Destroy Vested Rights is Unconstitutional.*

On February 19, 1982, the date of the alleged accident, ARCO was entitled to the statutory employer defense of §905(a) to the tort claim asserted by Chester Doucet. ARCO does not question the power of Congress to amend §905(a) and legislatively overrule *Johnson* on a prospective basis; however, Congress is prohibited from enacting legislation abolishing the statutory defense of §905(a) without violating the constitutional rights of ARCO to due process of law. ARCO was immune from suit in tort by Chester Doucet; and to permit Congress to abolish this vested defense in §905(a) retroactively and to otherwise create a cause of action on a retrospective basis is a direct violation of ARCO's constitutional rights.

"[R]etrospective laws are unconstitutional if they disturb or destroy existing or vested rights as by arbitrarily recreating a right or liability already extinguished by operation of law". *Lundquist vs. Coddington Brothers, Inc.,* 202 F.Supp. 19,21 (W.D.Wis. 1962). No distinction can be made between a vested right and a vested right to a

defense, and the same constitutional considerations apply to both. See *Morris vs. Pacific Electric Railway Co.*, 2 Cal. 2d 764, 43 P. 2d 276 (Cal. 1935). The Fifth Amendment prohibits Congress from retrospectively abrogating ARCO's vested right to a defense to Chester Doucet's claim.

This Court has consistently recognized that rights to defenses which have accrued to a party by means of a statute or act cannot be destroyed by subsequent legislation without violating the party's constitutional right to due process. See *William Danzer & Company v. Gulf & S.I.R. Co.*, 268 U.S. 633, 637 (1925); *Forbes Pioneer Boat Line vs. Board of Commissioners*, 258 U.S. 325, 340 (1922); *Ettor v. Jacoma*, 228 U.S. 148 (1913).

The plaintiff's cause of action in *Danzer* expired prior to filing a claim for lost goods with the Interstate Commerce Commission; however, the subsequent enactment of the Transportation Act provided plaintiff with a cause of action if the Act was applied retroactively. This Court refused to construe the statute "retroactively to create liability" because to give the statute that effect would "deprive" defendant of its property without due process of law in contravention of the Fifth Amendment. *Danzer*, supra, at 637.

Forbes involved a suit to recover unlawfully collected tolls. While the case was pending, the Florida Legislature passed an act to validate the collection and the plaintiff argued that the debtor's due process rights were not violated because the Legislature was merely retroactively confirming a situation that both parties felt existed prior to the enactment. The Court found that the statute was not

applicable and stated: "[t]o say that the Legislature simply was establishing the situation as both parties knew from the beginning it ought to be would be putting something of a gloss upon the facts. We must assume that the plaintiff went through the canal relying upon its legal rights and it is not to be deprived of them because the Legislature forgot." *Forbes,* supra, at 340.

In *Ettor,* a law required the City of Tacoma to compensate citizens for consequential damages suffered as a result of original street grading operations. Several suits to recover these damages were pending when the Legislature amended the statute to exclude original grading. The trial court found for the city because of the statute, but this Court reversed because the right to compensation was "fixed by the law in force when their property was damaged for public purposes, and the right so vested cannot be defeated by subsequent legislation". *Ettor,* 228 U.S. at 156.

The right of immunity from suit in tort under §905 (a) has been described in varying terms. In *Keller v. Dravo Corporation,* 441 F. 2d 1239, 1242 (5th Cir. 1971), the court said that the tort cause of action was being *abolished.* In *Robin v. Sun Oil Company,* 548 F. 2d 554 (5th Cir. 1977), the court spoke in terms of §905 (a) *destroying* any underlying tort liability. Furthermore, the court classified the §905(a) immunity from suit in tort as "a valuable right". *Robin,* supra, at p. 557. Whether the tort cause of action be termed abolished, extinguished or destroyed by §905(a), Chester Doucet had *no* cause of action in tort against ARCO. The Fifth Amendment to the United States Constitution prohibits Congress from retroactively divesting ARCO of the valuable vested right to a defense under

§905(a) or from creating a cause of action on behalf of Chester Doucet against ARCO.

The issue of whether amendments to the LHWCA are to be applied retroactively is not a question of first impression. In 1972, Congress amended §905(a) to abolish: (1) the remedy of unseaworthiness and (2) indemnity from the longshoring employer to the ship owner. In *Bell v. Isthmian Lines, Inc.*, 363 F. Supp. 156 (M.D.Fla. 1973) the amendments were held to have prospective application only. Reviewing the jurisprudence concerning retroactive and prospective application of law, the Court made the following observations at page 159:

> Due to the sometime harsh affect of retroactivity, statutes affecting substantial rights are invariably given prospective application; laws relating to procedural are given more liberal interpretation by the courts and are sometimes applied retroactively. (Citation omitted).
>
> Furthermore, a distinction should be drawn between curative statutes and amendatory statutes. Curative statutes, which by their nature are designed to affect the past, are necessarily retroactive in application. (Citation omitted). Amendatory acts, which create or abrogate claims for relief or substantive rights, are usually accorded prospective application. (Citation omitted).

Unquestionably the retroactive application of the 1984 amendments to §904(a) and §905(a) of the LHWCA will create an unfair result. The explicit language of Sections 904, 905 and the *Johnson* decision entitle ARCO to an absolute defense to the tort claim asserted by Chester Doucet. The 1984 amendments constitute an amendatory act abolishing ARCO's vested right to such a defense; the

amendments retroactively create a tort cause of action against ARCO some two and a half years after the date of the accident on which this suit is bottomed. Such retroactive legislation creating a cause of action is unconstitutional. See *Bounds v. T. L. James Company,* 124 F. Supp. 563, 569 (W.D.La. 1954). In *Bounds,* the survivors of Laura Bounds sought to proceed as plaintiffs in a wrongful death action which Laura Bounds had filed prior to her death, seeking damages for the death of her son. At the time of her death, Louisiana law provided that the action abated with her death. The survivors argued that the action had not abated because amendments to the law subsequent to her death provided that such action survived and the amendments should be given retrospective effect. The Court determined that the defendants acquired "a vested right, a substitute, or property right: to be free and clear forever of all claims", and that to apply the amendments retrospectively to divest these rights would be unconstitutional. 124 F. Supp. at 569. ARCO is in the same position as the defendants in *Bounds,* therefore any retrospective application of the 1984 amendments is unconstitutional.

CONCLUSION

The retroactive application of the 1984 amendments to §904(a) and §905(a) of the LHWCA divests ARCO of the vested substantive right to an absolute defense to the tort claim of Chester Doucet. The retroactive divestiture of such immunity is in violation of ARCO's due process rights under the Fifth Amendment to the United States Constitution. Notwithstanding Congress' displeasure over this Court's determination in *Johnson,* it is unconstitutional for

Congress to abolish §905(a)'s defense on a retrospective basis. Thus this Petition for a Writ of Certiorari should be granted.

ONEBANE, DONOHOE, BERNARD, TORIAN, DIAZ, McNAMARA & ABELL
BY_____
James E. Diaz, Sr.
P. O. Drawer 3507
Lafayette, Louisiana 70502
(318) 237-2660

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this 19th day of April, 1985, served a copy of the foregoing pleading on all counsel to this proceeding by mailing same by United States Mail, properly addressed and first class postage prepaid.

_____
JAMES E. DIAZ, SR.

APPENDIX "A"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

CHESTER LOUIS DOUCET
VS.
ATLANTIC RICHFIELD COMPANY
CIVIL ACTION NUMBER 83-0351
SECTION O

RULING

This matter comes before the Court on the motion of Atlantic Richfield Company (ARCO) for summary judgment in its favor, dismissing the claim of Chester L. Doucet. Doucet was working for Cactus International, Inc. on a fixed platform owned by ARCO under a drilling contract between ARCO and Cactus. Cactus secured Longshoremen's compensation for Doucet. ARCO has done nothing to secure such benefits. ARCO contends that it is immune from suit by Doucet under the exclusive remedy provisions of the Longshoremen's and Harborworkers' Compensation Act, relying on *Washington Metropolitan Area Transit Authority v. Johnson*, 52 U.S.L.W. 4869 (June 26, 1984). It is true that *Washington Metropolitan* is distinguishable from this case on its facts. Yet this only begins the inquiry for this Court must look to the Supreme Court's rationale in deciding this case. *Washington Metropolitan* establishes that tort immunity under LSHWCA is imposed as a penalty for failure to honor one's obligations under the Act, not as a reward for

honoring one's obligations. Thus, tort immunity is lost only when an employer or contractor fails to honor its obligation. The fact that a contractor may never be called upon to honor its contingent LSHWCA obligation does not appear to be a material one under *Washington Metropolitan*. Accordingly, the motion by Atlantic Richfield Company for summary judgment is GRANTED, and the claims of Chester L. Doucet and National Union Fire Insurance Company will be dismissed.

Opelousas, Louisiana, July 27, 1984.

JOHN M. SHAW
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

CHESTER LOUIS DOUCET
VS.
ATLANTIC RICHFIELD COMPANY
CIVIL ACTION NUMBER 83-0351
SECTION O

JUDGMENT

This matter came on for hearing before the Court, Honorable John M. Shaw, presiding, and the issues having been duly heard and a decision having been duly rendered.

It is ORDERED AND ADJUDGED that the plaintiff, Chester Louis Doucet, and the intervenor, National Union Fire Insurance Company, recover nothing from Atlantic Richfield Company, that the claims by the plaintiff and the intervenor against Atlantic Richfield Company be dismissed with prejudice, that Atlantic Richfield Company's third party demand against Cactus International, Inc. be dismissed as moot, and that the defendant Atlantic Richfield Company recover of the the plaintiff its cost of action.

Opelousas, Louisiana, July 27, 1984.

_____

JOHN M. SHAW
UNITED STATES DISTRICT JUDGE

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 84-4536

CHESTER LOUIS DOUCET,
Plaintiff-Appellant,

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA,
Intervenor-Appellant.

versus

ATLANTIC RICHFIELD COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the
Western District of Louisiana

January 30, 1985

Before GEE, POLITZ, and HIGGINBOTHAM, Circuit Judges.
PER CURIAM:*/

*/ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Appellant Doucet, injured while working for a drilling contractor on a fixed drilling platform owned by appellee Atlantic Richfield Company (ARCO), sued ARCO on various theories of recovery for his personal injuries. Mr. Doucet's employer had secured longshoremen's benefits for him; ARCO had not.

Under the controlling authority of Washington Metropolitan Area Transit Authority v. Johnson, _____ U.S._____, 81 L.Ed.2d 768 (1984), the trial court correctly granted summary judgment for ARCO. While this appeal was pending, the Congress overturned the *Washington Metro* holding by an amendment applicable to pending claims such as Mr. Doucet's. Martin v. Ingalls Shipbuilding, Division of Litton Systems, Inc., 746 F.2d 231 (5th Cir. 1984). Thus the basis of the trial court's holding — correct when made — has been destroyed, and the cause must be remanded for further proceedings.

REVERSED and REMANDED.

APPENDIX "C"

AMENDMENT V.

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX D

Pursuant to Rule 28, Atlantic Richfield Company declares the following subsidiaries and affiliates:

Alpart Farms (Jamaica) Ltd.
Alumina Contractors Limited
Alumina Partners of Jamaica
Alyeska Pipeline Service Company
The Ambler Mining Company
Anaconda Exploration New Zealand Limited
Anaconda Holdings Do Brasil LTDA
Anaflex S.A. de C.V.
Anamax Mining Company
ARCO Australia Coal Pty. Ltd.
ARCO Solar Nigeria Ltd.
Arilan, S.A. de C.V.
Arpet Petroleum Limited
A/S Skaland Grafitiverk
Atlantic Richfield de Mexico, S.A. de C.V.
Aughinish Alumina Limited
Aughinish Estates Limited
Aughinish Finance Limited
Aughinish Property (Nominees) Limited
Badger Pipeline Company
Bingham Development Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Limited
The British American Metals Company, Limited
Candel International Limited
Caribou-Chaleur Bay Mines Ltd.
Caribou-Smith Mines Ltd.
Centroamericana de Cobre, S.A.
Chile Copper Company
Cobre de Hercules, S.A.
Cobre de Mexico, S.A.
Cobrecel, S.A. de C.V.
Colonial Pipeline Company
Compania de Petroleo Ganso Azul, Ltda.
Compania Minera Dos Republicas, S.A. de C.V.

Compania Minera Kappa, S.A.
Compania Minera Penacobre, S.A.
Cook Inlet Pipe Line Company
Cupro San Louis, S.A. de C.V.
Curragh Coal Sales
Delaware Bay Transportation Company
Dexter de Mexico, S.A.
Dixie Pipeline Company
East Texas Salt Water Disposal Co.
85819 Canada Limited
Eisenhower Mining Company
Empresa de Comercio Exterior Mexicano, S.A. de C.V.
Energy Transportation Systems, Inc.
Ericsson, Inc.
Flower Street Limited
F.T.L. Company Limited
Gravity Adjustment, Inc.
Greater Pacific Limited
Griffith-Consumers Company
Hardy Oil Company
Imperial Eastman de Mexico, S.A.
Impulsora De Cobre, S.A. de C.V.
Industrias Nacobre, S.A. de C.V.
Industrias Tecnos, S.A. de C.V.
Iricon Agency Ltd.
Jamaica Alumina Security Company, Ltd.
Kenai Pipe Line Company
Kronos, Computacion y Teleproceso, S.A. de C.V.
Kuparuk Transportation Capital Corporation
Kuparuk Transportation Company
Las Quintas Serenas Water Company
Lavan Petroleum Co.
Lingobronce, S.A.
Manguera Flex, S.A. de C.V.
Manufacturera Mexicana De Partes Para Automoviles, S.A. de C.V.
Mayflower Mining Company
R.W. Miller (Holdings) Limited
Minera Anaconda Limitada
Montoro, Empresa Para La Industria Quimica Nacional de Cobre, S.A.
New Bingham Mary Mining Company

Nihon Oxirane Company, Ltd.
Nordisk Mineselskab A/S
Oil Shippers Service, Inc.
P.T. Arutmin Indonesia
Park City Ventures
Park Cummings Mining Company
Park Premier Mining Company
Participaciones Mexicanas, S.A. de C.V.
Platte Pipe Line Company
Prince Consolidated Mining Company
Productos Especiales Metalicos, S.A.
Richfield U.K. Petroleum, Limited
Rodman, Inc.
The Saudi Cable Company
Servicios Industriales Nacobre, S.A.
Sinclair U.K. Oil Company Limited
Sinclair Venezuelan Oil Company
Smoke House Copper Mining Company
Sociedada Anonima Marvin
Solar Energy Center (E.C.)
Solvamex, S.A. de C.V.
Sumiarco Company Limited
Swecomex, S.A.
Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company
Trans Mountain Oil Pipe Line Company
Tubos Flexibles, S.A.
Union de Credito Industrial Vallejo, S.A.
United Park City Mines Company
The Walworth Company
West Mayflower Mining Company
William Prym de Mexico, S.A.